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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 6th January 2011

No. 191—li/1(B)-335/1992 (Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st December 2009 in Industrial Dispute Case No. 4/1994 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Country Spirit Liquor Shop, Chandrabhaga, Puri and its Workman Shri Pravat Ku. Mohapatra was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 4 OF 1994

Dated the 31st December 2009

Present :

Shri S. K. Dash,
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

The Management of .. First-Party—Management
M/s. Country Spirit Liquor Shop,
Chandrabhaga,
Puri.

And

Its Workman Shri Pravat Ku. Mohapatra .. Second-Party—Workman

Appearances :

Shri J. Reheman, Advocate		... For First-Party—Management
Smt. I. J. Begum, Advocate		
Shri A. K. Routray, Advocate		... For Second-Party—Workman
Shri B. N. Rath, Advocate		
Shri K. C. Mishra, Advocate		

AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c)/(d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court vide Order No.—17484-li/1(B)-335/1992--LE., dated the 30th December 1993 of the Labour & Employment Department, Bhubaneswar for adjudication of the dispute.

2. The terms of reference is as follows :

"Whether the termination of services of Shri Pravat Ku. Mohapatra, ex-Salesman of Country Spirit Liquor Shop, Chandrabhaga, P.S. Konark, Dist. Puri by the Proprietor Shri Prasanna Ku. Senapati, Shri Pradipta Ku. Senapati and Shri Pravat Ku. Mohapatra is legal and/or justified ? If not, to what relief the workman is entitled ?"

3. The case of the workman in brief is that he was working as a Salesman in the Liquor Shop of the management running in the name and style of Chandrabhaga Country Liquor Shop at Chandrabhaga. At that time, Late Debendra Kumar Senapati the father of Prasanna Kumar Senapati and Pradipta Kumar Senapati was the proprietor of the Liquor Shop. After his death, both the management being his sons of said Liquor Shop took charge of the said establishment. During rendering service to the management, the workman was only receiving Rs.100 per month including fooding and clothing from 1976 to 1992. He continued as such till the 31st March 1992. After notification of revised minimum wages by the competent authority, the workman requested the management for payment of revised minimum wages at the rate of Rs. 35 per day. Instead of considering his request, the management terminated his service from the 1st April 1992 without following the required procedure of law as established under the Industrial Disputes Act. While retrenching him from service, the management has not paid any notice pay or retrenchment compensation to the workman which clearly violation of Section 25-F of the Industrial Disputes Act. The action of the management is illegal, arbitrary, improper and contrary to the law for which the workman raised an industrial dispute and being the conciliation failed before the District Labour Officer, Puri, the matter has been referred by the Government to this Court for adjudication.

4. Initially the management did not turn up for which an *ex parte* Award was passed on the 27th April 1996 and it was quashed by the Hon'ble Court vide Order No. 7, dated the 15th July 2008 passed in W.P.(C) No. 2924/2008 with a direction for fresh adjudication. Thereafter the management though appeared does not choose to file any written statement but contested the case.

5. In view of the above pleading of the workman, the following issues are to be decided.

ISSUES

(i) Whether the termination of services of Shri Pravat Kumar Mohapatra ex-Salesman of Country Liquor Shop, Chandrabhaga, P.S. Konark, Dist. Puri by the Proprietors Shri Prasanna Kumar Senapati and Shri Pradipta Kumar Senapati is legal and/or justified ?

(ii) If not, to what relief the workman is entitled ?

6. In order to substantiate his plea the workman has examined himself as W.W 1 and proved documents marked as Exts. 1 to 5 and 5/a. Similarly, the management has examined one of the management, namely Shri Pradeep Kumar Senapati as M.W. 1. But no document has been proved and marked as exhibit on behalf of the management.

FINDINGS

7. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for discussion being co-related and for convenient.

W.W. 1 deposes that he joined as Salesman on the 1st April 1976 in Chandrabhaga Country Liquor Shop under the proprietorship of Debendra Senapati. After his death, the present managements, his two sons took charge of the said establishment. He uninterruptedly served in the said establishment till the 31st March 1992. After notification of the Government regarding revision of minimum wages, when he demanded for minimum wages at the rate of Rs. 35 per day instead of considering his request he was retrenched from service with effect from the 31st March 1992 without following the mandatory provision of the Industrial Disputes Act. During his service tenure, he made some deposits in Treasury and he has proved three numbers of Treasury Challans marked as Exts. 1, 1/a and 1/b. He also deposes that he has purchased raw materials on behalf of the management and has proved some cash memo vide Ext. 2 series. The then Manager of the management was maintaining the register mentioning the daily sale, transaction and other expenditures and the name of the workman has been mentioned in the said register. Ext. C series are such transaction and expenditure register. Ext. 4 is the affidavit shown by the workman changing his name from Pravat Kumar Sahoo to Pravat Kumar Mohapatra on the 14th July 1986. Ext. 5 is the letter regarding supply of informations under R.T.I. Act to the workman by the Superintendent, Excise, Puri and Ext. 5/a is the xerox copy of licence for the Shop of the management for the year 1990-1991. M.W. 1 by filing affidavit evidence denied the plea of the workman. As stated earlier, the management has not filed any written statement after appearing in the case. In the cross-examination M.W. 1 admitted that from April, 1989 till March, 1994, the Country Liquor Shop was in the name of his brother and himself and licence was issued for every year separately and the said licence copy of every year were with them but he has not filed any such document for the reasons best known

to him. In Ext. 1 series, the name of one U. C. Senapati has been mentioned instead of Debendra Kumar Senapati. Similarly, in Ext. 2 series the name of U. C. Senapati has been mentioned in most of the documents whereas the name of Debendra Kumar Senapati has been mentioned in Ext. 2/d and Ext. 2/h. Ext. 3 series do not appear the name of the firm and name of the Proprietor and signature of the persons to come to the conclusion that such document belongs to the management. But Ext. 5 is an important document from which it clearly shows that it was issued by the Collector, Puri in favour of the management and list of authorised agents and Salesman has been mentioned thereunder the signature of Superintendent of Excise, Puri. In such list, the name of the workman is found place and signature of both the management has been found place as the licensee of Chandrabhaga Country Liquor Shop for the year 1990-1991. It is argued by the advocate for the management that the said document is not legible clearly. The name of the workman has been mentioned as Salesman and his father name has been mentioned as Mukunda Mohapatra. The father's name of the workman is Mukunda Sahoo and it is argued that the name mentioned in Ext. 5/a is a different person than of the workman. But if Ext. 5/a will be read along with Ext. 4 it clearly shows that the present workman was the Salesman under the management. The management has not come forward with specific evidence to show that there is another person in the name of Pravat Kumar Mohapatra, S/o. Mukunda Mohapatra. So in absence of any specific proof, the plea of the management cannot be accepted. M.W. 1 in his cross-examination has clearly admitted that in Ext. 5/a his signature and the signature of his brother is available and the name of the present workman is also available in such document. Further, he deposes that he has no knowledge as to who were the workers of the Shop during the lifetime of his father. So, that is also the admitted fact as mentioned earlier plea of the management that the present workman was not working under the establishment of the management cannot be accepted.

8. The workman has been retrenched from service without following the provisions of Section 25-F of the Industrial Disputes Act which is a mandatory one. He has not received any notice pay and retrenchment compensation. So, when his retrenchment from service is not according to the provisions of the Industrial Disputes Act, his retrenchment is illegal. So on a careful consideration of the entire evidence both oral and documentary as discussed above, I came to the finding that the termination of services of Shri Pravat Kumar Mohapatra, ex-Salesman of Country Liquor Shop, Chandrabhaga, P.S. Konark, Dist. Puri by the Proprietors Shri Prasanna Kumar Senapati and Shri Pradipta Kumar Senapati is neither legal nor justified.

9. The workman has prayed for reinstatement in service with full back wages but no specific evidence has been adduced that he has not working anywhere during the period after retrenchment. It is an admitted fact that he has not worked for the management, for the relevant period. However, it is now well settled by reasons of catena of decisions of the Hon'ble Supreme Court that relief of reinstatement with full back wages would not be granted automatically only

because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration. However, on careful consideration of all the materials available, now I am of the opinion that in lieu of full back wages, a lump sum consolidated amount as compensation will meet the ends of justice. Therefore, the workman is entitled to be reinstated in service with a lump sum amount of Rs. 20,000 (Rupees twenty thousand) only in lieu of back wages.

Hence, the reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
31-12-2009
Presiding Officer
Labour Court
Bhubaneswar.

S. K. DASH
31-12-2009
Presiding Officer
Labour Court
Bhubaneswar.

By order of the Governor

P. K. PANDA
Under-Secretary to Government